

**IN THE UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF NEBRASKA**

<b>UNITED STATES OF AMERICA,</b>	)	<b>CASE NO. 8:09CR28</b>
	)	
<b>Plaintiff,</b>	)	
	)	
<b>vs.</b>	)	<b>MEMORANDUM</b>
	)	<b>AND ORDER</b>
<b>DAVID L. JOHNSON, JR.,</b>	)	
	)	
<b>Defendant.</b>	)	

This matter is before the Court on the Defendant's notice of appeal (Filing No. 74), the Clerk's memoranda regarding the untimeliness of the notice (Filing No. 75), and the statement of the Defendant's in forma pauperis status (Filing No. 76).

On October 25, 2009, the Court entered Judgment and sentenced the Defendant to 84 months imprisonment and 5 years supervised release. On June 21, 2011, the Court denied the Defendant's motion requesting a sentencing adjustment as a result of Amendment 706 to the U.S. Sentencing Guidelines. The Defendant filed a notice of appeal from that order on July 18, 2011.

Federal Appellate Rule of Procedure 4(b)(1)(A)(i) provides that, under the circumstances presented in this case, a criminal defendant's notice of appeal must be filed within 14 days of the entry of the judgment or order being appealed. Federal Appellate Rule of Procedure 4(b)(4) provides that the 14-day period may be extended by 30 days upon a finding of excusable neglect or good cause.

In this case, the notice of appeal is untimely. The Defendant has not shown excusable neglect or good cause.

IT IS ORDERED:

1. The Defendant's notice of appeal (Filing No. 74) is untimely;

2. The Defendant is not permitted to proceed in forma pauperis on appeal; and
3. The Clerk is directed to mail a copy of this order to the Defendant at his last known address.

DATED this 28<sup>th</sup> day of July, 2011.

BY THE COURT:

s/Laurie Smith Camp  
United States District Judge